

State of Arizona
House of Representatives
Forty-seventh Legislature
Second Regular Session
2006

HOUSE BILL 2001

AN ACT

AMENDING SECTION 42-1122, ARIZONA REVISED STATUTES; RELATING TO TAX REFUND SETOFF FOR DEBTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:
Section 1. Section 42-1122, Arizona Revised Statutes, is amended to read:

42-1122. Setoff for debts to state agencies and courts: revolving fund; definitions

A. The department shall establish a liability setoff program by which refunds under sections 42-1118 and 43-1072 may be used to satisfy debts ~~which~~ THAT the taxpayer owes TO this state or a court. The program shall comply with the standards and requirements prescribed by this section.

B. If a taxpayer owes an agency or court a debt, the agency or court, by November 1 of each year, may notify the department, furnishing at least the state agency, court or program identifier, the first name, last name, middle initial OR MIDDLE NAME AND SUFFIX, ~~and~~ social security number ~~AND ANY OTHER AVAILABLE IDENTIFICATION THAT THE AGENCY OR COURT DEEMS APPROPRIATE~~ of the debtor ~~AS SHOWN ON THE RECORDS OF THE AGENCY OR COURT~~, and the amount of the debt.

C. The department shall match the information submitted by the agency or court BY AT LEAST TWO ITEMS OF IDENTIFICATION OF THE TAXPAYER with taxpayers who qualify for refunds under section 42-1118 and:

1. Notify the agency or court of a potential match, the taxpayer's home address and any additional taxpayer identification numbers used by the taxpayer. Even if the taxpayer is not entitled to a refund, the department of revenue shall provide to:

(a) The court, the clerk of the court and the department of economic security, for child support and spousal maintenance purposes only, the home address of a taxpayer whose debt for overdue support is referred for setoff and any additional taxpayer identification numbers used by the taxpayer.

(b) The court, the home address and any additional taxpayer identification numbers used by the taxpayer whose debt for a court obligation is referred for setoff and who is identified by the court as a probationer on absconder status.

2. Request final agency or court confirmation **IN WRITING** within ten days of the match and of the continuation of the debt. If the agency or court fails to provide confirmation within forty-five days after the request, the department shall release the refund to the taxpayer.

D. An agency or court may submit updated information, additions, deletions and other changes on a quarterly or more frequent basis, at the convenience of the agency or court.

E. On confirmation pursuant to subsection C, paragraph 2 of this section, the agency shall notify the taxpayer, by mail to the most recent address provided by the taxpayer to the department: _____.

1. Of the intention to set off the debt against the refund due. **and**
 2. Of the taxpayer's right to appeal to the appropriate court, or to seek a review by the agency pursuant to agency rule, within thirty days of mailing of the notice.

1 F. THE TAXPAYER SHALL IN ADDITION RECEIVE NOTICE THAT IF THE REFUND IS
2 INTERCEPTED IN ERROR THROUGH NO FAULT OF THE TAXPAYER, THE TAXPAYER MAY BE
3 ENTITLED TO THE FULL REFUND PLUS INTEREST AND PENALTIES FROM THE AGENCY OR
4 COURT AS PROVIDED BY SUBSECTION O OF THIS SECTION.

5 G. The basis for a request for review AS PROVIDED BY SUBSECTION E OF
6 THIS SECTION shall not include the validity of the claim if its validity has
7 been established at an agency hearing, by judicial review in a court of
8 competent jurisdiction in this or any other state or by final administrative
9 decision and shall state with specificity why the taxpayer claims the
10 obligation does not exist or why the amount of the obligation is
11 incorrect. ~~If the setoff accounts for only a portion of the refund due, the
12 remainder of the refund shall be sent to the taxpayer.~~

13 H. If, within thirty days of the mailing of the notice, the
14 taxpayer requests a review by the agency or provides the agency with proof
15 that an appeal has been taken to the appropriate court, the agency shall
16 immediately notify the department and the setoff procedure shall be stayed
17 pending resolution of the review or appeal.

18 I. If the department does not receive notice of a timely appeal,
19 it shall draw and deliver a warrant in the amount of the available refund up
20 to the amount of the debt in favor of the agency and notify the taxpayer of
21 the action by mail.

22 J. Subsections E, ~~F and~~ G, H AND I of this section do not apply
23 to a debt imposed by a court EXCEPT THAT THE TAXPAYER SHALL RECEIVE NOTICE OF
24 THE INTENT TO SETOFF THE DEBT AGAINST THE REFUND DUE AND THE RIGHT TO APPEAL
25 TO THE COURT THAT IMPOSED THE DEBT. THE BASIS FOR THE REQUEST FOR REVIEW
26 SHALL NOT INCLUDE THE VALIDITY OF THE CLAIM AND SHALL STATE WITH SPECIFICITY
27 WHY THE TAXPAYER CLAIMS THE OBLIGATION DOES NOT EXIST OR WHY THE OBLIGATION
28 IS INCORRECT.

29 K. IF THE SETOFF ACCOUNTS FOR ONLY A PORTION OF THE REFUND DUE, THE
30 REMAINDER OF THE REFUND SHALL BE SENT TO THE TAXPAYER. A court shall not use
31 this section to satisfy a judgment or payment of a fine or civil penalty
32 until the judgment has become final or until the time to appeal the
33 imposition of a fine or civil penalty has expired.

34 L. A revolving fund is established to recover and pay the cost of
35 operating the setoff program under this section. The department may
36 prescribe a fee to be collected from each agency or court utilizing the
37 setoff procedure or from the taxpayer, and the amount shall be deposited in
38 the fund. The amount of the fee shall reasonably reflect the actual cost of
39 the service provided. Monies in the revolving fund are subject to
40 legislative appropriation.

41 M. If agencies or courts have two or more delinquent accounts for
42 the same taxpayer, the refund may be apportioned among them pursuant to rules
43 prescribed by the department of revenue, except that a setoff to the
44 department of economic security for overdue support has priority over all
45 other setoffs.

1 **K.** N. If the refund is insufficient to satisfy the entire debt, the
2 remainder of the debt may be collected by the agency or court as provided by
3 law or resubmitted for setoff against subsequent refunds.

4 **L.** O. In the case of a refund that is intercepted in error under this
5 section, the taxpayer shall be reimbursed by the agency or court with
6 interest pursuant to section 42-1123. IN ADDITION, IF ALL OR PART OF A
7 REFUND IS INTERCEPTED IN ERROR DUE TO AN AGENCY OR COURT INCORRECTLY
8 IDENTIFYING A TAXPAYER AS A DEBTOR THROUGH NO FAULT OF THE TAXPAYER, THE
9 AGENCY OR COURT SHALL ALSO PAY THE TAXPAYER A PENALTY AS FOLLOWS:

10 1. IF THE AGENCY OR COURT REIMBURSES THE TAXPAYER THIRTY-ONE THROUGH
11 ONE HUNDRED EIGHTY DAYS AFTER THE REFUND WAS ERRONEOUSLY INTERCEPTED AND THE
12 REFUND WAS RECEIVED BY THE AGENCY OR COURT, THE PENALTY IS EQUAL TO TEN PER
13 CENT OF THE AMOUNT OF THE REFUND THAT WAS INTERCEPTED.

14 2. IF THE AGENCY OR COURT REIMBURSES THE TAXPAYER ONE HUNDRED
15 EIGHTY-ONE THROUGH THREE HUNDRED SIXTY-FIVE DAYS AFTER THE REFUND WAS
16 ERRONEOUSLY INTERCEPTED AND THE REFUND WAS RECEIVED BY THE AGENCY OR COURT,
17 THE PENALTY IS EQUAL TO FIFTEEN PER CENT OF THE AMOUNT OF THE REFUND THAT WAS
18 INTERCEPTED.

19 3. IF THE AGENCY OR COURT FAILS TO REIMBURSE THE TAXPAYER WITHIN THREE
20 HUNDRED SIXTY-FIVE DAYS AFTER THE REFUND WAS ERRONEOUSLY INTERCEPTED AND THE
21 REFUND WAS RECEIVED BY THE AGENCY OR COURT, THE PENALTY IS EQUAL TO TWENTY
22 PER CENT OF THE AMOUNT OF THE REFUND THAT WAS INTERCEPTED.

23 P. THE TIME PERIODS SET FORTH IN SUBSECTION O OF THIS SECTION SHALL BE
24 STAYED DURING A REVIEW OF AN AGENCY DECISION PURSUANT TO SECTION 25-522.

25 **M.** Q. Except as is reasonably necessary to accomplish the purposes of
26 this section, the department shall not disclose under this section any
27 information in violation of chapter 2, article 1 of this title.

28 **N.** R. An agency or court shall not enter an agreement with a debtor
29 for:

30 1. The assignment of any prospective refund to the agency or court in
31 satisfaction of the debt.

32 2. Payment of the debt if the debt has been confirmed to the
33 department for setoff under subsection C, paragraph 2 of this section.

34 **O.** S. If a tax refund is based on a joint income tax return and the
35 department of economic security receives a written claim from the
36 nonobligated spouse within forty-five days after the notice of a setoff for
37 overdue child support, the setoff only applies to that portion of the refund
38 due to the obligor. The nonobligated spouse shall provide to the department
39 of economic security copies of both the obligated and nonobligated spouse's
40 federal W-2 forms and evidence of estimated tax payments supporting the
41 proportionate share of each spouse's payment of tax. The department of
42 economic security shall retain the amount of the set off refund due to the
43 obligated spouse determined by a proration based on the tax payments of each
44 spouse by estimated tax payment or tax withheld from wages.

1 ~~P.~~ T. For the purposes of this section:

2 1. "Agency" means a department, agency, board, commission or
3 institution of this state. Agency also means a corporation that is under
4 contract with this state and that provides a service that would otherwise be
5 provided by a department, agency, board, commission or institution of this
6 state, if the contract specifically authorizes participation in the liability
7 setoff program and the attorney general's office has reviewed the contract
8 and approves such authorization. The participation in the liability setoff
9 program shall be limited to debt related to the services the corporation
10 provides for or on behalf of this state.

11 2. "Court" means all courts of record, justice courts, municipal
12 courts and police courts.

13 3. "Debt" means an amount over fifty dollars owed to an agency or
14 court by a taxpayer and may include a judgment in favor of this state or a
15 political subdivision of this state, interest, penalties, charges, costs,
16 fees, fines, civil penalties, surcharges, assessments, administrative charges
17 or any other amount. Debt also includes monies owed by a taxpayer for
18 overdue support and referred to the department of economic security for
19 collection.

20 4. "Overdue support" means a delinquency in court ordered payments for
21 spousal maintenance or support of a child or for spousal maintenance to the
22 parent with whom the child is living if child support is also being enforced
23 pursuant to an assignment or application filed under 42 United States Code
24 section 654(6) or other applicable law.